

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

United States Court of Appeals
Fifth Circuit

FILED

April 14, 2008

No. 06-31300
Summary Calendar

Charles R. Fulbruge III
Clerk

DWAYNE BROWN

Plaintiff-Appellant

v.

LOUISIANA STATE DEPARTMENT OF CORRECTIONS; RICHARD L
STALDER

Defendants-Appellees

Appeal from the United States District Court
for the Middle District of Louisiana
USDC No. 3:06-CV-568

Before JOLLY, DAVIS, and DeMOSS, Circuit Judges:

PER CURIAM:*

Dwayne Brown, Louisiana prisoner # 96518, appeals the dismissal of his 42 U.S.C. § 1983 complaint as frivolous. Brown argues that the defendants, the Louisiana Department of Public Safety and Corrections (the Department) and Richard Stalder, have erroneously classified him as a fourth felony offender, a determination which has rendered him ineligible for parole. The Louisiana Supreme Court, however, has held that the Department is not bound by a court's

* Pursuant to 5TH CIR. R. 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIR. R. 47.5.4.

habitual offender adjudication in calculating parole eligibility. *Townley v. Dep't of Public Safety & Corr.*, 681 So. 2d 951, 953 (La. 1996). Because Brown's civil rights action is factually frivolous, the district court's judgment is affirmed. See *Bickford v. Int'l Speedway Corp.*, 654 F.2d 1028, 1031 (5th Cir. 1981). We warn Brown that our affirmance of the district court's dismissal of his complaint counts as one strike under 28 U.S.C. § 1915(g) and that, if he accumulates three strikes, he will not be able to proceed in forma pauperis in any civil action or appeal filed while he is incarcerated or detained in any facility unless he is under imminent danger of serious physical injury. See *Adepegba v. Hammons*, 103 F.3d 383, 388 (5th Cir. 1996).

AFFIRMED; SANCTION WARNING ISSUED.